

DOCKET FILE COPY ORIGINAL
Shainis & Beltzman

Counselors at Law
Suite 200
2000 I Street, N.W.
Washington, D.C. 20036

(202) 416-1633
Fax (202) 416-1823

Aaron B. Shainis
Lee J. Beltzman

**ORIGINAL
RECEIVED**

NOV 15 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY
OF COUNSEL**

William M. BuRoss, III
Matthew L. Leibowitz

November 15, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

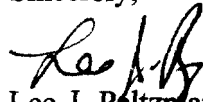
Re: Petition for Reconsideration
Petition for Rule Making
Duluth, Minnesota

Dear Mr. Caton:

Transmitted herewith, on behalf of QB Broadcasting, Inc. ("QB"), petitioner for a rule making requesting the substitution of Channel 269C3 for Channel 269A at Duluth, Minnesota, is an original and four (4) copies of its Petition for Reconsideration of the Commission's November 3, 1994, letter dismissing a Petition for Rule Making filed by QB.

Please contact the undersigned should questions arise regarding this filing.

Sincerely,


Lee J. Beltzman
Counsel for

QB BROADCASTING, INC.

Enclosure

cc: John A. Karousos, Esq.
FCC - Room 8102

CA1994LP.FCC/DULUTHRM.REC

No. of Copies rec'd
List ABCDE

044

NOV 15 1994

Before The
FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:

Amendment of Section 73.202(b)
FM Table of Allotments
(Duluth, Minnesota))
)
)
)
)MM DOCKET NO.
RM-To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau**PETITION FOR RECONSIDERATION**

QB Broadcasting, Inc. ("QB"), licensee of Station KLXK-FM, Duluth, Minnesota, by its attorney, hereby respectfully seeks reconsideration of the Commission's letter, dated November 3, 1994, from Acting Chief, Allocations Branch, returning a Petition for Rule Making filed by QB. In support of its position, QB submits the following:

On October 18, 1994, QB filed a Petition for Rule Making at the Commission requesting the substitution of Channel 269C3 for Channel 269A at Duluth, Minnesota, and a concurrent modification of license of Station KLXK-FM, Duluth, Minnesota. The rule making proposal noted that an application had been filed requesting the substitution of Channel 266A for Channel 269A at Hayward, Wisconsin. The Hayward application removed any short spacing to the proposed upgrade at Duluth.

The Commission's November 3, 1994, letter stated that an engineering review by the Commission did not locate the Hayward application for channel change and that, consequently, QB's rule making petition was being dismissed. See Attachment A.

Attached hereto is a copy of the Commission public notice accepting for filing an application to substitute Channel 266A for Channel 269A for Station WHSM-FM, Hayward,

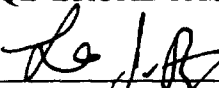
Wisconsin. See Attachment B. Thus, the basis of the Commission's November 3, 1994, letter is incorrect, since an application was on file at the date of the letter.^{1/}

In view of the fact that the Hayward application proposing a channel substitution accommodates the Duluth upgrade proposal, there was and is no impediment to the Commission's consideration of the Petition for Rule Making filed by QB on October 17, 1994. Accordingly, QB requests that the Commission grant this reconsideration petition and accept the October 17, 1994, Petition for Rule Making seeking the substitution of Channel 269C3 for Channel 269A at Duluth, Minnesota, and the concurrent modification of Station KLXK-FM, Duluth, Minnesota. Also, as explained in QB's rule making petition, the Commission should temporarily delay its processing of QB's rule making proposal until the Commission's FM Branch has determined whether it will grant QB's waiver request and accept QB's "one-step" upgrade application for Station KLXK-FM.

Respectfully submitted,

QB BROADCASTING, INC.

By:



Lee J. Peltzman
Its Attorney

SHAINIS & PELTZMAN
Suite 200
2000 L Street, N. W.
Washington, D. C. 20036
202/416-1633

November 15, 1994

CA1994LP.FCCDULUTHRM.002

^{1/} The public notice incorrectly states that the licensee of Station WHSM-FM is Donald Welch. The correct licensee of WHSM-FM is Q-Venture Broadcasting, Inc. ("Q-Venture"). It should be noted that Q-Venture, licensee of Station WHSM-FM, Hayward, Wisconsin, is wholly-owned by Alan R. Quarnstrom, the same individual who owns 100% of QB Broadcasting, Inc., licensee of Station KLXK-FM, Duluth, Minnesota. Thus, clearly, WHSM-FM consents to the channel upgrade for Station KLXK-FM.

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

NOV 03 1994

IN REPLY REFER TO:

Mr. Lee J. Peltzman
Shainis & Peltzman
2000 L Street, N. W., Suite 200
Washington, D. C. 20036

Dear Mr. Peltzman:

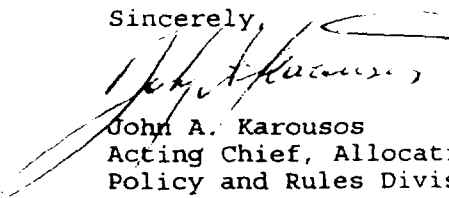
This is in response to the petition for rule making which you submitted on October 18, 1994, requesting the substitution of Channel 269C3 for Channel 269A at Duluth, Minnesota, and modification of the license for Station KLXK-FM to specify operation on the higher class channel.

We have reviewed your proposal and find that it is unacceptable for rule making at this time. Channel 269C3 at Duluth is short spaced to Channel 269A, Station WHSM-FM, Hayward, Wisconsin. Although you indicate an application has been filed requesting the substitution of Channel 266A for Channel 269A at Hayward that would remove the short spacing to your proposed upgrade at Duluth, our engineering review could not locate an application for a channel change at Hayward. Therefore, to accommodate your proposal for Duluth, a channel substitution is necessary at Hayward which requires a reimbursement commitment from Station KLXK-FM.

As you are aware, the Commission adopted rules which allow upgrades on co-channel and adjacent channels by application. The Commission has stated that those parties who do meet the guidelines must avail themselves of the new procedure. See Report and Order, MM Docket No. 92-159, 8 FCC Rcd 4735 (1993). Therefore, should Station WHSM-FM, Hayward, Wisconsin, file a one step application to change channels, that same procedure may be available for you at Duluth.

Based on the above discussion, we are returning the proposal for Duluth.

Sincerely,


John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

FM BROADCAST STATION APPLICATIONS ACCEPTED FOR FILING
(MINOR CHANGE APPLICATIONS ARE SIMULTANEOUSLY ACCEPTED FOR TENDER)

NM BPH -941027JC NEW
103.7MHZ COTTONWOOD COMMUNICATIONS CORP.
ALAMOGORDO , NM

NY BMPH -941026JB WXQZ
101.5MHZ DAVID T. & ANN D. G. BUTTON
CANTON , NY

NY BALH -941031GH WKOL-FM
97.7MHZ GATEWAY BROADCASTING CORP.
AMSTERDAM , NY

NY BMPH -941031JA WECO
93.7MHZ KIC RADIO, LTD.
CLYDE , NY

WI BPH -941004IC WCOM
98.7MHZ NICOLET BROADCASTING, INC.
PARK FALLS , WI

WI BPH -941019IF WHSM-FM
101.7MHZ DONALD WELCH INTERIM MANAGER
HAYWARD , WI

CP TO REPLACE EXPIRED PERMIT (BPH-870820MJ AS REINSTATED)
1ST REQUESTMP (BPH-880810MP AS EXT) FOR EXTENSION OF TIME
4TH REQUESTVOL. ASSIGNMENT OF LICENSE FROM THE MEG COMPANY TO GEM
ASSOCIATES, L.P. (AUX) FORM 316
ATTY: JAMES J. FREEMAN ASGE ADDRESS: POST OFFICE BOX
484/OAKTON, VA 22184

MP (BPH-8805190I AS MOD) FOR EXTENSION OF TIME

CP TO MAKE CHANGES ERP: 57 KW (H&V), FREQ: 98.3 CLASS FROM A
TO CCP TO MAKE CHGS ERP: 1.5KW (H&V), FREQ: 101.1 MHZ, HAAT: 126
METERS (H&V)

FM BROADCAST STATION APPLICATIONS PETITION FOR RECONSIDERATION FILED

CA BPH -910327IC KOCN
105.1MHZ C.R. PASQUIER PROPERTIES, INC.
PACIFIC GROVE , CA

CP TO MAKE CHANGES. CHG. FREQ. 105.1 MHZ; ERP 4.2 KW H&V;
HAAT 240.7 METERS H&V; TL: APROX 3.2 KM NORTH OF CARMEL
VALLEY AIRPORT (062), A SMALL, LOW-TRAFFIC AIRSTRIIP
CLASS B1 PER MM DOCKET 90-17
*CP CANCELLED ON: 10-04-94 PET FOR RECON FILED 10-31-94

FM BROADCAST STATION APPLICATIONS AMENDMENT RECEIVED

AK BALH -940729GH KYKD
100.1MHZ ARCTIC BROADCASTING ASSOCIATION
BETHEL , AK

CA BMPH -901224IG KHWY
98.9MHZ KRXV, INC.
ESSEX , CA

FL BMPH -940509IQ NEW
105.5MHZ JUPITER RADIO PARTNERS
JUPITER , FL

AMENDMENT (941018G5)

ENGINEERING AMENDMENT (941025IC)

ENGINEERING AMENDMENT (9411011A)

Shainis & Peltzman

Counselors at Law
Suite 200
2000 L Street, N.W.
Washington, D.C. 20036

(202) 416-1633
Fax (202) 416-1823

Aaron H. Shainis
Lee J. Peltzman

**COPY
RECEIVED**

OCT 18 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY
BY Counsel

William H. BuRoss, III
Matthew L. Leibowitz

October 17, 1994

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N. W.
Washington, D. C. 20554

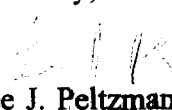
Re: Petition for Rule Making
Duluth, Minnesota

Dear Mr. Caton:

Transmitted herewith, on behalf of QB Broadcasting, Inc., is an original and four (4) copies of its Petition for Rule Making seeking the substitution of Channel 269C3 for Channel 269A at Duluth, Minnesota, and the concurrent modification of license of Station KLXK-FM at Duluth.

Please contact the undersigned should questions arise regarding the filing of this Petition for Rule Making.

Sincerely,


Lee J. Peltzman
Counsel for
QB BROADCASTING, INC.

Enclosure

cc: Andrew J. Rhodes, Esq.
FCC - Room 8010

RECEIVED

OCT 18 1994

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Amendment of Section 73.202(b)
FM Table of Allotments
(Duluth, Minnesota)

)
)
)
)
)

MM DOCKET NO.
RM-

To: Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

PETITION FOR RULE MAKING

QB Broadcasting, Inc. ("QB"), licensee of Station KLXK-FM, Duluth, Minnesota, by its attorney, hereby respectfully requests that Section 73.202(b) of the Commission's rules be amended as follows:

	Channel No.	
	<u>Present</u>	<u>Proposed</u>
Duluth, Minnesota	269A	269C3

The allocation of Channel 269C3 at Duluth, Minnesota, can be made in accordance with the Commission's minimum distance separation and principal community coverage requirements. QB additionally requests the concurrent modification of its license for Station KLXK-FM to specify operation on Channel 269C3 at Duluth.

Clearly, the public interest would be advanced by the allotment of an expanded wide coverage area service to the community of Duluth, Minnesota. In the event that Channel 269C3 is allotted to Duluth, QB will promptly file an application for construction permit and, once that application is granted, will immediately construct its station and commence broadcast operations.

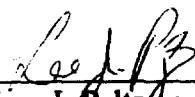
In fact, concurrent with the filing of this rule making petition, QB is filing a "one-step" upgrade application for KLXK-FM with the Commission seeking modification of construction permit on Channel 269C3 at Duluth. However, that application is contingent on the grant of another application and, for that reason, a waiver of the Commission's rules is being sought therein. Therefore, QB requests that the Commission delay its processing of this petition and its release of a Notice of Proposed Rule Making in this matter until the Commission's FM Branch has determined whether it will accept or dismiss QB's "one-step" upgrade application.

Respectfully submitted,

QB BROADCASTING, INC.

SHAINIS & PELTZMAN
Suite 200
2000 L Street, N. W.
Washington, D. C. 20036

By:



Lee J. Peltzman
Its Attorney

202/416-1633

October 17, 1994



OWL ENGINEERING, INC.

CONSULTING COMMUNICATIONS ENGINEERS

**1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502**

**ENGINEERING STATEMENT ON BEHALF OF
QB BROADCASTING
IN SUPPORT OF A PETITION TO AMEND
THE FM TABLE OF ALLOTMENTS
CHANNEL 269C3 TO DULUTH, MINNESOTA**

September 30, 1994



1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

**ENGINEERING STATEMENT ON BEHALF OF
QB BROADCASTING
IN SUPPORT OF A PETITION TO AMEND
THE FM TABLE OF ALLOTMENTS
CHANNEL 269C3 TO DULUTH, MINNESOTA**

Owl Engineering, Inc. has been retained by QB Broadcasting (hereafter QB) to prepare this Engineering Statement in support of a petition to amend the FM Table of Allotments, FCC Rule Section 73.202(b) as follows:

Location
Duluth, MN

Present
269A

Proposed
269C3

The reference coordinates used for this study are:

46 38' 11" North Latitude
92 00' 26" West Longitude

The proposal of QB was evaluated to determine if the proposed site coordinates would meet FCC spacing requirements. That analysis is attached as Engineering Exhibit E-1. As can be seen from exhibit E-1, QB's proposal meets all FCC spacing requirements set forth in section 73.207 of the FCC Rules.

The proposal of QB was evaluated to determine if the proposed site would meet FCC signal coverage requirements. The three to sixteen kilometer average terrain was computed using the NGDC data base and the distance to contours was computed using the FCC F(50,50) metric curves. The distance to the 70 dBu contour was calculated with an antenna



CONSULTING COMMUNICATIONS ENGINEERS

1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

**ENGINEERING STATEMENT ON BEHALF OF
QB BROADCASTING
IN SUPPORT OF A PETITION TO AMEND
THE FM TABLE OF ALLOTMENTS
CHANNEL 269C3 TO DULUTH, MINNESOTA**

Height Above Mean Sea Level (HAMSL) of 331 meters (HAAT: 100 meters) and an output power of 25 KW ERP. Engineering Exhibit E-2 shows the 70 dBu contour plotted and demonstrates that the entire city of Duluth is served by a signal strength of 70 dBu or greater.

The reference site would also provide line of site coverage to Duluth. Engineering Exhibit E-3 shows a terrain profile plot from the reference site to the city of Duluth. This permitted a determination to be made that there are no major obstructions in the intervening path from the transmitter site to the principal community. Clearly, the proposal of QB meets the requirements of FCC Rule section 73.315.

The reference site is depicted in Engineering Exhibit E-4 and shows that the reference site is suitable for tower construction.



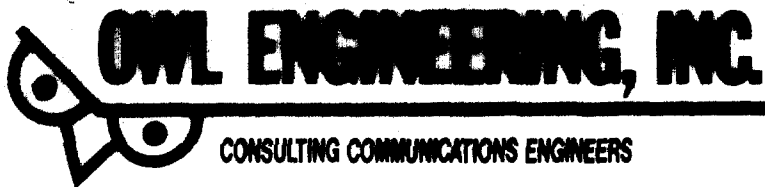
CONSULTING COMMUNICATIONS ENGINEERS

1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

**ENGINEERING STATEMENT ON BEHALF OF
QB BROADCASTING
IN SUPPORT OF A PETITION TO AMEND
THE FM TABLE OF ALLOTMENTS
CHANNEL 269C3 TO DULUTH, MINNESOTA**

Based on the engineering studies provided, the following conclusions can be obtained:

1. The proposal will provide Duluth with a full time regional broadcast service.
2. The proposal will meet the requirements of FCC Rule Section 73.315.
3. The proposal will meet the requirements of FCC Rule Section 73.207.



CONSULTING COMMUNICATIONS ENGINEERS

1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

**ENGINEERING STATEMENT ON BEHALF OF
QB BROADCASTING
IN SUPPORT OF A PETITION TO AMEND
THE FM TABLE OF ALLOTMENTS
CHANNEL 269C3 TO DULUTH, MINNESOTA**

AFFIDAVIT

RAMSEY COUNTY)
STATE OF MINNESOTA)

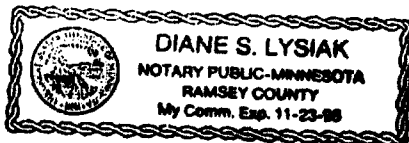
ss:

Michael W. Radovich, being first duly sworn, says that he is an employee of Owl Engineering, Inc., consulting communications engineers with offices in Arden Hills, Minnesota; that his qualifications as an expert in communications engineering are a matter of record with the Federal Communications Commission; that the foregoing exhibit was prepared by him and under his direction; and that the statements contained therein are true of his own personal knowledge except those stated to information and belief and, as to those statements, verily believes them to be true and correct.



Michael W. Radovich, P.E.

Subscribed and sworn to before me this date September 30, 1994



Diane S. Lysiak
Notary Public

My commission expires November 23, 1998



1306 W. County Road F, St. Paul, MN 55112
(612) 631-1338 • Fax (612) 631-3502

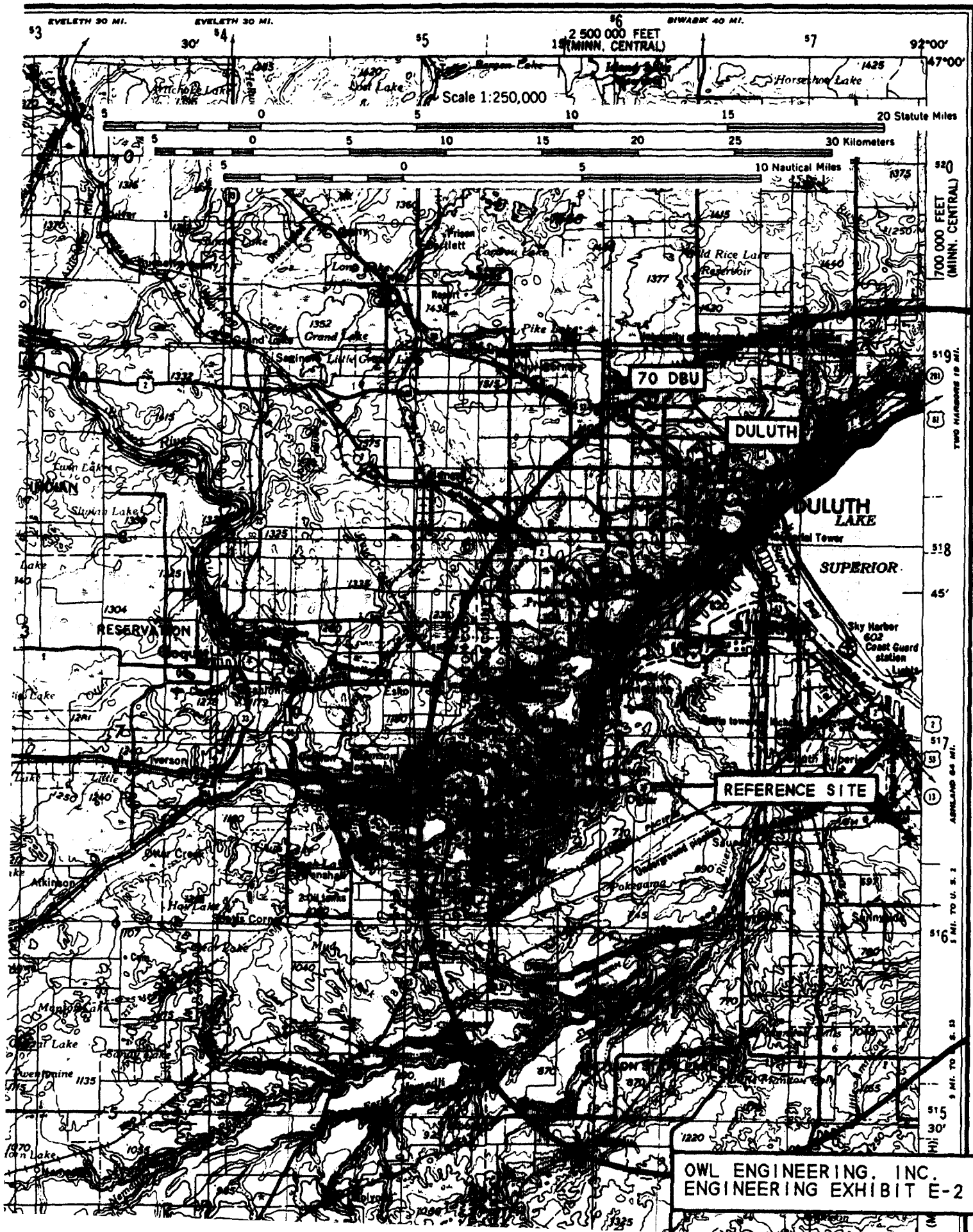
**ENGINEERING EXHIBIT E-1
QB BROADCASTING
IN SUPPORT OF A PETITION TO AMEND
THE FM TABLE OF ALLOTMENTS
CHANNEL 269C3 TO DULUTH, MINNESOTA**

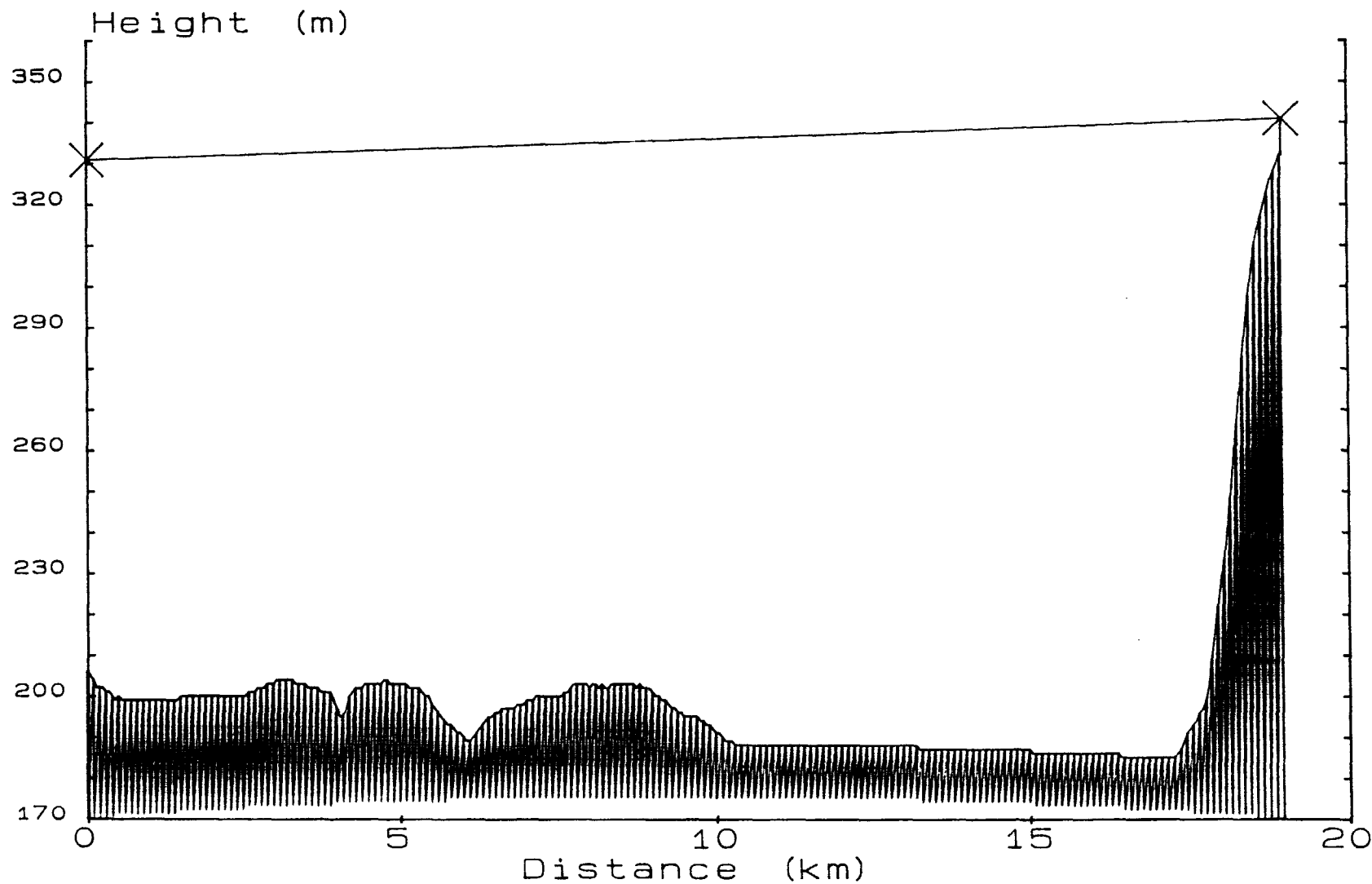
FM Channel 269-C3

LATITUDE: 46° 38' 11"
LONGITUDE: 92° 0' 26"

CHNL	Call	City	Class	Calculated Km.	Required Km.	Clear- ance	Bearing °
215							
216							
266							
267							
268							
269	WHSMPM	FMWI Hayward	A	80.86	142	-61.14	153.42*
269		FAON Fort Frances	B	250.77	223	27.77	332.43
269	WHMH	FRMN Sauk Rapids	C2	214.54	177	37.54	235.88
270		FRMN Nashwauk	C3	114.75	99	15.75	311.83
271							
272							

* WHSMPM has filed a one step application modifying their channel of operation to channel 266A.



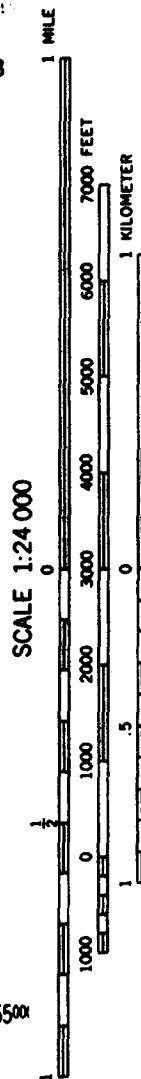
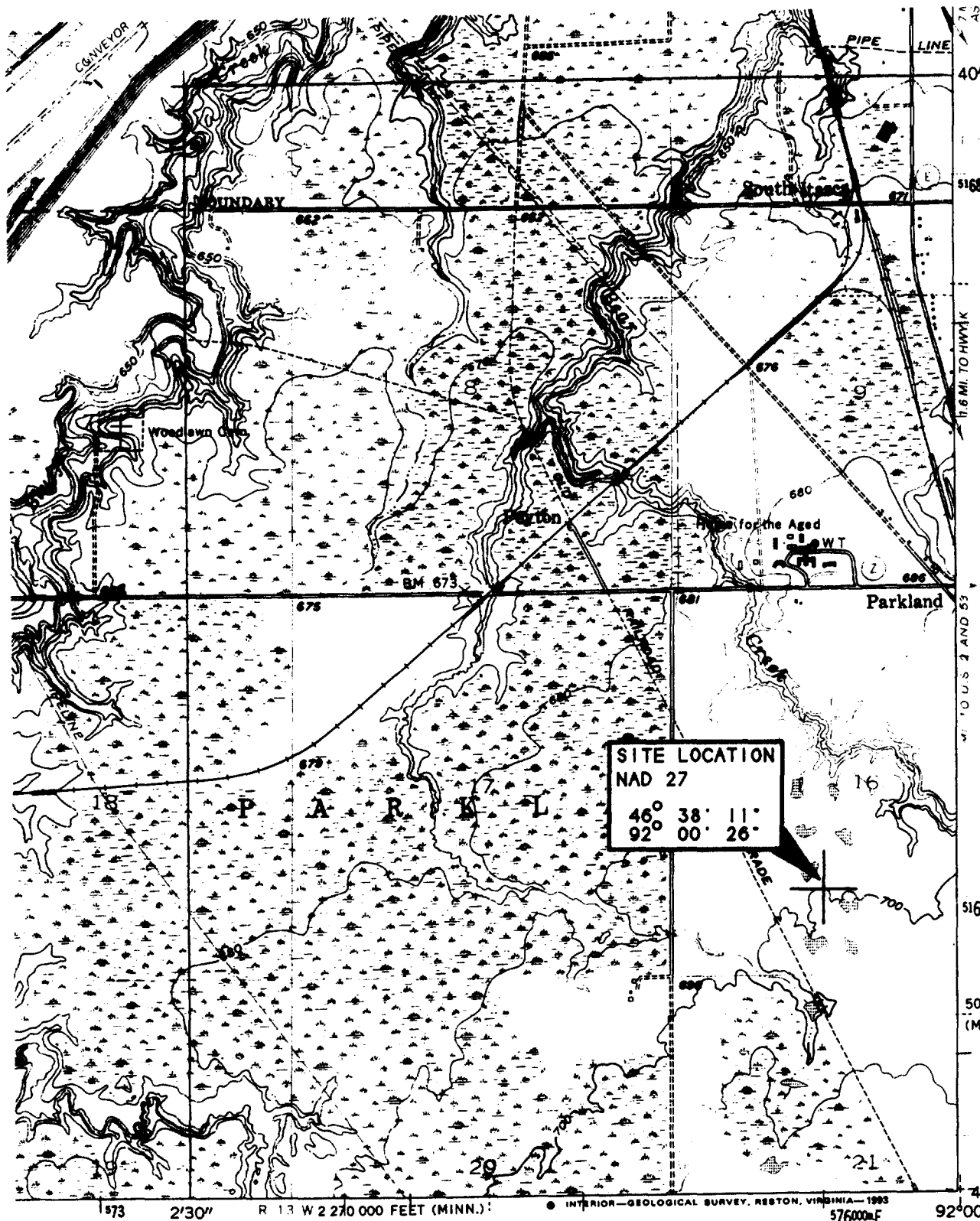


Profile Study For Duluth, MN

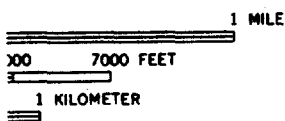
Owl Engineering, Inc.
1306 W. County Rd. F

Saint Paul, Minnesota
(612) 631-1338

Engineering Exhibit E-3



CONTOUR INTERVAL 10 FEET
NATIONAL GEODETIC VERTICAL DATUM OF 1929



QUADRANGLE LOCATION

ROAD CLASSIFICATION

Primary highway, hard surface	Light-duty road, hard or improved surface
Secondary highway, hard surface	Unimproved road
Interstate Route	U. S. Route
	State Route

SUPERIOR, WIS.-MINN.

NE/4 SUPERIOR 15' QUADRANGLE
46092-F1-TF-024

1:24,000 CLASS 2
STON, VIRGINIA 22092
V, WISCONSIN 53706
ON REQUEST

Revisions shown in purple compiled in cooperation with State of Minnesota agencies from aerial photographs taken in 1991 and other sources. This information not field checked. Map edited 1993. Information shown in purple may not meet USGS content standards and may conflict with previously mapped portions. Purple tint indicates extension of urban area.

OWL ENGINEERING, INC.
ENGINEERING EXHIBIT E-4